

to conform with the regulations in the same respect as the cherry jelly and raspberry jelly referred to above. One item in the package, peanut butter, was alleged to be misbranded because of failure of the label to bear any statement of the quantity of the contents.

One shipment was labeled "Net 1 Lb. 10 Oz.," together with a statement of the ingredients on the outside of the package. It was alleged to be misbranded because the statement "1 Lb. 10 Oz." was false and misleading, and because of failure to bear an accurate statement of the quantity of the contents. Two items in the box, grape flavor apple jelly, and Damson plum jelly, did not conform to the definition and standard for jellies, and were alleged to be misbranded in the same respect as the substandard jellies previously referred to. The Damson plum jelly was alleged to be misbranded further in that its label bore no statement of the quantity of the contents. The grape flavor apple jelly and a product labeled "Altray Mar-Zee-Pon" were alleged to be misbranded further in that the statements "2 Oz." with respect to the former, and "6 $\frac{3}{4}$ ounces," with respect to the latter, were false and misleading since the jar and box contained less than these amounts; also because of failure of the labels to bear an accurate statement of the quantity of the contents.

On August 26, 1943, the defendant having entered a plea of not guilty, the case came on for trial before the court and a jury. Evidence was introduced on behalf of the Government and the defendant; the trial concluded on August 28, 1943, and the jury returned a verdict of guilty on the following charges: Count 1, net weight of boxes, the labeling on the peanut butter and charge regarding quality of cherry jelly; count 2, net weight of the boxes, weight of the black cherry jam, quality of the black cherry jam and labeling of the peanut butter; count 3, net weight of the boxes, weight of the apple jelly, raspberry jelly and lime jelly, and quality of the apple jelly, raspberry jelly and lime jelly; count 4, net weight of the boxes, weight of the raspberry and lime jelly, quality of the raspberry and lime jelly; count 5, weight of the grape flavor apply jelly and Damson jelly, also quality of the same jellies. The defendant was fined \$1,000 on count 1, and sentence was suspended on the remaining counts.

5590. Misbranding of gift packages. U. S. v. U. S. Candy & Food Corporation. Plea of guilty. Fine of \$750 to cover counts 1, 2, and 6 of the information; imposition of sentence suspended on remaining counts 3, 4 and 5. (F. D. C. No. 8833. Sample Nos. 31756-F, 31858-F, 31909-F, 31910-F, 41601-F, 41603-F, 41606-F.)

These products were short of the declared weight.

On May 13, 1943, the United States attorney for the Southern District of New York filed an information against the U. S. Candy & Food Corporation, New York, N. Y., alleging shipments within the period from on or about October 24, to November 17, 1942, from the State of New York into the State of Ohio of quantities of gift packages which were misbranded. The article was labeled in part: "Victory Snack-Pack A Treat From Home * * * Net Weight 3 $\frac{3}{4}$ Lbs. [or "Net Weight 2 Lbs."]."

The article was alleged to be misbranded in that the statements "3 $\frac{3}{4}$ Lbs.," and "Net Weight 2 Lbs.," borne on the label, were false and misleading since the boxes labeled "Net Weight 3 $\frac{3}{4}$ Lbs." contained substantially less than 3 $\frac{3}{4}$ pounds, and the boxes labeled "Net Weight 2 Lbs." contained substantially less than 2 pounds net weight. The article was alleged to be misbranded further in that it was in package form and its label failed to bear an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, and the variation between the statement of quantity borne on the label and the quantity actually contained in the box was unreasonable. One shipment was alleged to be misbranded further in that its container was so made, formed, and filled as to be misleading since underneath one of the items, a box of Crunch-ettes, was a large empty space in which food could have been packed, and the contents of the package had been packed with excessive packing medium, excessive paper cups and cardboard dividers, and by reason of the empty space and excessive packing medium the package contained a substantially smaller quantity of food than its outward appearance would indicate was contained therein.

On November 23, 1943, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$750 which covered counts 1, 2, and 6 of the information and suspended imposition of sentence on the remaining 3 counts.